IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

WRIT PETITION NO.3091 OF 2006

Shilpan Patel . ...Petitioners

vs.

State of Maharashtra & Ors. ...Respondents

Mr.Naushad Engineer i/by. M/s.Vijay Kumar & Co.
for the petitioner.

K.R. Belosay, G.P. for Respondent/State.

CORAM: S.C. DHARMADHIKARI, J.

29th January, 2007.

P.C :-

1. Heard Mr.Engineer appearing for the petitioner and Mr.Belosay appearing for the respondents.

2. The challenge in this petition under Article 226 of the Constitution of India is to the notices issued for recovery, being Exhibits B, D and E under which according to the petitioners a sum of Rs.3,86,580/- and penalty upto August 2006 has been demanded by the respondents.

3. The following facts are not in dispute :-

(a) That the petitioner purchased an immovable property more particularly described in para 3(a) of this petition under an agreement dated 14.10.2002.

(b) It is the case of the petitioner that he paid stamp duty of Rs.14,38,750/- on this agreement,which was subsequently registered.

(c) However, in January 2006 he received a demand notice dated 12.12.2005 under which the respondents were seeking to recover the deficit stamp duty from the petitioner. This was pursuant to the provisions in the Stamp Act which enables the state to recover the stamp duty by resorting to the coercive measures

available under Maharashtra Land Revenue Code. In other words, this duty can be recovered as arrears of land revenue.

(d) The petitioner upon receipt of this notice, pointed out to the respondents that whatever was the difference/deficit in stamp duty amounting to Rs.4,11,250/- was already paid by him by a Demand Draft dated 30.1.2006 favouring the Sub-Registrar of Assurances. The petitioners relies upon a receipt dated 16.2.2006 acknowledging the receipt of the Demand Draft.

(e) It is also not in dispute that this Demand Draft was favouring the Sub-Registrar, Mumbai Suburban District. There was some correction to be made by the petitioner and accordingly upon correction a fresh Demand Drat dated 1.3.2006 was handed in.

(f) It is in these circumstances, that the petitioner states that the stamp duty including the deficit stamp duty has been duly paid. There is no question of payment of any penalty in these facts and

circumstances.

(g) Mr.Belosay appearing for the State has filed Affidavit-in-reply and affidavit-in-sur-rejoinder and has pointed out that once the payment was made of the amount of Rs.4,11,250/- without any reservation and grievance, then the petitioner now cannot urge that principles of natural justice have been violated. He invites my attention to para 5 of the Affidavit of one Ankush Rama Devgunde, Sub-Registrar and Administrative Officer, MSD affirmed on 25.1.2007 so also Section 39(1)(b) of the Bombay Stamp Act, 1958.

(h) In my view, it is not necessary to enter into a larger controversy in the peculiar facts of this case. Once it is not disputed that the entire stamp duty so also the deficit stamp duty has been paid on 30.1.2006 and at the request of the parties a fresh Demand Draft was also forwarded, then, there is no occasion to levy any penalty amount much less in August, 2006. It is not in dispute before me that a sum of Rs.4,11,250/- is deficit stamp duty as also the penalty. There is no question of any penalty

being levied in the peculiar facts and circumstances of this case because that aspect comes into account when there is deliberate refusal or utter negligence to pay the amount demanded by the authorities. In the peculiar facts of this case, I find that the stamp duty as also the deficit amount was tendered almost immediately after the subject recovery notice. In these circumstances,, there is no warrant for recovering any further penalty. Accordingly it is clarified that the petitioner having paid Rs.4,11,250/- the sum shall constitute full and final settlement of all claims of the stamp authorities so also the revenue authorities. The petitioner shall not be called upon to pay any further penalty, considering the peculiar facts of this case.

(i) Needless to state, that disposal of the petition by this arrangement shall not form a precedent in any future case. The respondents can take recourse to all measures permissible in law for recovery of any stamp duty or deficit so also penalty from erring parties.

sd/-

(S.C.DHARMADHIKARI, J)